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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR        | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------------|---------------------|------------------|
| 09/710,097  | 11/10/2000  | Daniel Abeshouse            | ARIBP052            | 4234             |
| 21912 7590 07/21/2011<br>VAN PELT, YI & JAMES LLP<br>10050 N. FOOTHILL BLVD #200<br>CUPERTINO, CA 95014 |             |                             |                     |                  |
| EXAMINER<br>WEISBERGER, RICHARD C   |             |                             |                     |                  |
| ART UNIT<br>3693  |             | PAPER NUMBER                |                     |                  |
| NOTIFICATION DATE<br>07/21/2011   |             | DELIVERY MODE<br>ELECTRONIC |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[usptocorrespondence@ip-patent.com](mailto:usptocorrespondence@ip-patent.com)

### Office Action Summary

**Application No.**

09/710,097

**Applicant(s)**

ABESHOUSE ET AL.

**Examiner**

RICHARD C. WEISBERGER

**Art Unit**

3693

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-11, 13, 16-19, 29-32, 60-68, 70 and 73-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-11, 13, 16-19, 29-32, 60-68, 70, and 73-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

Claims 1, 4-11, 13, 16-19, 29-32, 60-68, 70, and 73-80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims, a competing bidder is indefinite in scope. How is a bidder who has not placed at least one bid a competing bidder?

Claim 13 is vague and indefinite as to the scope of total value including a non-price factor. In addition, it is not clear if the bid is non-monetary (though for the purposes of this office action it will be assumed that the bid of a monetary value).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 4-11, 13, 16-19, 29-32, 60-68, 70, and 73-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. 7801802.

Walker et al. teach the principal that a condition may be specified using

information about the auction or time or other information to determine when a bid may be placed by the proxy bidder. For example, a condition may be specified by a fixed amount of time or a variable amount of time. The variable amount of time may be a function of, for example but not limited to, the amount of time left in the auction, whether the auction has been extended, the rate at which bids are placed in the auction, or the current price of the item. A condition also may be specified by a fixed number of bids, e.g., one, or a variable number of bids. The variable number of bids may be a function of, for example, the amount of time left in the auction, whether the auction has been extended, the rate at which bids are placed in the auction, or the current high bid price for the item. A condition also may be specified by a ratio between a number of bids and an amount of time, which may be fixed or variable. See paragraph 38.

Walker et al. fails to teach placing a condition on the whom shall receive the bid data. It would have been obvious to one skilled in the art at the time to have place conditions on who shall receive the bid data. The examiner takes official notice that this is routine in the art (e.g., secret auctions etc). The motivations for limiting the view of the auction book/depth are also well known. It would have been obvious to have combined these teachings and have included the conditions (rank, price, etc.) of the claims as motivated by the need to maximize the bid and/or increase the privacy of the auction and/or encourage higher and/or faster bidding.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHARD C. WEISBERGER whose telephone number is (571)272-6753. The examiner can normally be reached on 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571 272 6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RICHARD C WEISBERGER  
Primary Examiner  
Art Unit 3693

/RICHARD C WEISBERGER/  
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